

TOWN OF KITTERY, MAINE
PLANNING BOARD MEETING
Council Chambers

APPROVED
September 11, 2014

Meeting called to order at 6:01 p.m.

Board Members Present: Tom Emerson (6:26), Karen Kalmar, Susan Tuveson, Mark Alesse, Deborah Driscoll Davis, Bob Melanson, Ann Grinnell

Members absent:

Staff: Chris DiMatteo, Assistant Planner

Pledge of Allegiance

Minutes: August 28, 2014

Ms. Kalmar moved to accept the minutes of August 28, 2014 as corrected

Ms. Davis seconded

4 in favor; 0 against; 1 abstention (Tuveson)

PUBLIC COMMENT

Ken Lemont: Requested the Board address the proposed sign ordinance amendment affecting gas pricing signage using LED lights, as this affects only 6 businesses in community. He asked the Board give urgent consideration to the amendment as gas signs are no longer made without LED lights. Also, changing gas prices on signs is a safety issue.

No further public comment.

ITEM 1 – Shepard’s Cove Subdivision – Modification to an Approved Plan – Final Plan Review.

Action: Hold a public hearing, approve or deny final plan.

Owner and applicant DLJ Corp., is requesting consideration of their plans to amend the previously approved 2004 subdivision plan, replacing a proposed 24 unit building with detached 4 single-unit buildings at their Elderly Housing Facility located off Rogers Road, Tax Map 22, Lot 21, Residential-Urban Zone and Shoreland Overlay Zone. Agent is Lewis Chamberlain, P.E., Attar Engineering, Inc.

Lew Chamberlain: The proposed modification is to replace an originally approved 24-unit building with four single units, reduced from five following archaeological findings at the Pettegrew site. With the finding of a cellar hole, the Pettegrew site will be protected with a chain link fence during construction; the area will not be seeded, but left in its natural state.

- New units will be part of the Homeowners Association;
- No amended areas are within the resource protection or shoreland zones;
- Capacity has been confirmed by the sewer and water districts;
- Addressed CMA's comments regarding level spreaders;
- Wetland identification on the previously approved plan have been supported by a wetland scientist;
- No light poles will be added, only building mounted lights;
- Landscaping will match the existing site landscaping, with no new street trees on the site;
- A prior approval condition requiring nine trees be planted along Rogers Road appears to have been met.

Ms. Davis: Site plan note 38 on Sheet C-1, needs to be amended to read units S7-S10. Will the Pettegrew site be clearly marked following construction, and if any additional site remnants are found, would construction be stopped?

Mr. Chamberlain: The owners could somehow mark the Pettegrew site area. It is the archaeologist's opinion the site area has been identified, but if something is found, it would be reviewed.

Ms. Grinnell: Has Mr. Moffat's ROW questions been resolved?

Mr. Chamberlain: The Board's packets contain communication from Attorney Carleton regarding the ROW maintenance and Mr. Moffat's claim regarding utilities.

Board members concurred they were satisfied with the information provided by Attorney Carleton.

Ms. Kalmar: Will the condominium documents reflect the preservation of the Pettegrew site, and have they been reviewed by the Town Attorney?

Mr. DiMatteo: If the Board requests review, it can be done.

Earldean Wells, Conservation Commission: Association Documents should reflect no tree cutting on the site, as had happened before; include restriction to archaeological site;

John Convery, President, Homeowners Association: The tree cutting happened at the beginning of the project; the MDEP required remediation which was done to their satisfaction;

Mr. Chamberlain: There will be no trees removed around the Pettegrew site.

The Public Hearing opened and closed at 6:19 p.m. with no public testimony

Ms. Kalmar: The current applicant did not build the previous units at this development.

Discussion followed regarding the Pettegrew Site. The Board agreed to leave to the developers discretion regarding further findings at the site.

Ms. Grinnell: The site needs to be identified after construction, for protection.

Geffory Jellison, DLJ Corp: The developer will develop something to mark the archaeological site.

Mr. Jellison: The appearance of the new buildings will be same as single units at entry of development.

Ms. Davis: The road is identified as Road A but marked as Road 1 on Plans; can this be changed

Mr. Chamberlain: This identification is on recorded plans and deeds and would be difficult to change.

The DEP Site Location of Development permit is expected to be received at any time.

Mr. Melanson moved to approve the final plan for Shepard's Cove subdivision, to reduce the approved 24-unit building to 4 single detached units, and read the Findings of Fact.

Ms. Grinnell seconded

Motion carried unanimously by all members in attendance

[Mr. Emerson arrived at 6:26 p.m.]

Findings of Fact for Shepard's Cove, Amendment to an Approved Subdivision:

WHEREAS: Owner and applicant DLJ Corp., is requesting consideration of their plans to amend the previously approved 2004 amended subdivision plan, replacing a proposed 24 unit building with detached 4 single-unit buildings at their Elderly Housing Facility located off Rogers Road, Tax Map 22, Lot 21, Residential-Urban Zone and Shoreland Overlay Zone. Hereinafter the "Development".

NOW THEREFORE, based on the entire record before the Planning Board and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings:

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| Action by the board is based upon the following Findings of Fact (referenced in Plan Review Notes – Shepard's Cove Amendment – September 11, 2014) which certify or waive compliance with all the required standards of this title, and which certify that the development satisfies the following requirements: |
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| A. Development Conforms to Local Ordinances. |
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| Vote of <u>6</u> in favor <u>0</u> against <u>1</u> abstaining (Emerson) |
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| B. Freshwater Wetlands Identified. | Vote of <u>6</u> in favor <u>0</u> against <u>1</u> abstaining (Emerson) |
| C. River, Stream or Brook Identified. | Vote of <u>6</u> in favor <u>0</u> against <u>1</u> abstaining (Emerson) |
| D. Water Supply Sufficient. | Vote of <u>6</u> in favor <u>0</u> against <u>1</u> abstaining (Emerson) |
| E. Municipal Water Supply Available. | Vote of <u>6</u> in favor <u>0</u> against <u>1</u> abstaining (Emerson) |
| F. Sewage Disposal Adequate. | Vote of <u>6</u> in favor <u>0</u> against <u>1</u> abstaining (Emerson) |
| G. Municipal Solid Waste Disposal Available. | Vote of <u>6</u> in favor <u>0</u> against <u>1</u> abstaining (Emerson) |
| H. Water Body Quality and Shoreline Protected. | Vote of <u>6</u> in favor <u>0</u> against <u>1</u> abstaining (Emerson) |
| I. Groundwater Protected. | Vote of <u>6</u> in favor <u>0</u> against <u>1</u> abstaining (Emerson) |
| J. Flood Areas Identified and Development Conditioned. | Vote of <u>6</u> in favor <u>0</u> against <u>1</u> abstaining (Emerson) |
| K. Stormwater Managed. | Vote of <u>6</u> in favor <u>0</u> against <u>1</u> abstaining (Emerson) |
| L. Erosion Controlled. | Vote of <u>6</u> in favor <u>0</u> against <u>1</u> abstaining (Emerson) |
| M. Traffic Managed. | Vote of <u>6</u> in favor <u>0</u> against <u>1</u> abstaining (Emerson) |
| N. Water and Air Pollution Minimized. | Vote of <u>6</u> in favor <u>0</u> against <u>1</u> abstaining (Emerson) |
| O. Aesthetic, Cultural and Natural Values Protected. | Vote of <u>6</u> in favor <u>0</u> against <u>1</u> abstaining (Emerson) |
| P. Developer Financially and Technically Capable. | Vote of <u>6</u> in favor <u>0</u> against <u>1</u> abstaining (Emerson) |

Now therefore, the Kittery Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines the proposed Development will have no significant detrimental impact, and the Kittery Planning Board hereby grants Preliminary and Final Approval for the Development at the above referenced property, including any waivers granted or conditions as noted.

Waivers: none

Conditions: (All conditions must be included on the final plan prior to signature by the Planning Board Chairman)

1. Receipt of all applicable State and Federal permitting/approvals.
2. Prior to the commencement of grading and/or construction within a building envelope, as shown on the Plan, the owner and/or developer must stake all corners of the envelope. These markers must remain in place until the Code Enforcement Officer determines construction is completed and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed.
3. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan. See Title 16.10.9.1.2.
4. Instructions/Notice to Applicant per September 11, 2014 Findings of Fact

The Planning Board authorizes the Planning Board Chairman to sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval.

Vote of 6 in favor 0 against 1 abstaining (Emerson)

An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered. See Title 16.6.2.A.

Mr. Emerson assumed Chair (6:34 p.m.)

OLD BUSINESS

ITEM 2– Pine Tree Plaza Site Plan – Modification to an Approved Plan. Action: Continue Plan Application.

Kenneth Lemont, owner and applicant (for Harrison E. Lemont Management Co., Inc.), requests approval to amend a previously approved Site Plan in order to replace an existing building (Curtis House) and attached ell with a new 2,450 sf building and increase the existing garage (by 364 sf). The property is located at 435 US Route 1 in the Mixed Use zone, Tax Map 50, Lot 8.

Ken Lemont: Requests extension to resolve issues including designing of a rain garden and stormwater plans.

Ms. Kalmar moved to grant a continuance not to exceed 90 days

Ms. Grinnell seconded

Motion carried unanimously

ITEM 3 – Board Member Items / Discussion:

A. Debrief on Joint TC/PB 9/8 workshop;

Mr. DiMatteo: Preparing a GIS identifying properties and build-out.

- Ms. Kalmar: The Board needs to develop a pro/con list for the ordinance amendment for Council workshop on October 6; list is due to staff by 9/18.
- Ms. Tuveson: This is a serious policy change with this proposed amendment, and may be outside of the Board's charge; if the Board wishes to control development in particular part of town it needs to be made clear; requests Council direction for such stringent policy change;
- Ms. Kalmar: This is not intended to limit growth, but to direct growth to areas of town with utilities;
- Mr. Melanson: The responsibility of the Board is to plan, with Council guidance and consideration; believes the value of property will decrease with this proposed amendment;

- Mr. Alesse: The proposed amendment reflects a lot of effort and is in conformance with the comprehensive plan; no property owner has a guaranteed right to develop their property that diminishes the value of other property owners; protect those who already live in Kittery, and maintain its charm; large scale development changes the town and cannot be absorbed; it is the Board's right and responsibility to control growth; this amendment won't hurt small landowners wishing to share their land with their children; it will slow the growth and impact of large-scale, out-of-town developers who only wish to make a profit.
 - Mr. Melanson: Rural Residential zoning is 1 acre, not 3, per the Comp Plan. The Council did not accept the 3 acre minimum.
 - Ms. Davis: Individuals who own large tracts of land should be aware of what the Comp Plan recommends.
 - Mr. Emerson: Concerned about the impact on the Cluster Ordinance's intent to preserve open space; adamantly against increasing to 3 acre zoning, creating sprawl.
 - Ms. Kalmar: If acreage increases, only the Net Residential Density would change. The intent of the amendment is intensity of development in areas without services; this affords time to consider other avenues, while honoring the intent of the Comp Plan.
 - Discussion followed regarding whether the Cluster Ordinance is working for the Town; preservation of open space; modifications allowed within the Cluster ordinance; historical density in Kittery; forwarding amendment to Council to begin debate; growth/building caps.
 - Ms. Kalmar: The Board needs to focus on the two amendments before the Council, net residential acreage and sewage disposal, and not attempt to bring in the Cluster ordinance.
 - Mr. DiMatteo: In addition to the pro/con list, consider a sunset clause; does the Board intend the amendment to allow a minor subdivision, 4 lots, or limit it to three units, which creates a subdivision. This will be on the next agenda.
 - Ms. Grinnell: Can the Board have a public hearing on the LED issue at the October meeting?
 - Mr. Emerson: This should be on the next agenda.
 - Ms. Kalmar: There are some other amendments approved by the Board that ready to go to the Council workshop on October 6.
- B. Town Code Quality Improvement Overlay Zone;
Mr. Emerson spoke about developing a model that could revitalize/retrofit a particular outlet mall area, the demise of covered malls, the increase of outlet malls and on-line shopping. The model would help the property maintain its value to the community by including residential units, decrease impervious surface and protect the adjacent natural resources. This would be a proactive planning process.
Ms. Tuveson: This area, the old Dansk outlet, could become a center for residences and residential use, such as a gym.
Mr. DiMatteo: The Board may want to revisit their action list to insure this is included and prioritized.
- C. Town Code Sign Workshop
Mr. DiMatteo: The LED inclusion for signage will be included on the September 25 meeting agenda.
Mr. Emerson: Additionally the Board needs to set a workshop to address the overall sign ordinance.
- D. Town Code Outdoor Seating; amendment 10/23
Mr. Emerson: This needs to be addressed prior to the new year, moving from Title 5 to Title 16.
Mr. DiMatteo: This amendment only deals specifically with the public right of way and could stay in Title 5.
Mr. Emerson: This can be reviewed and a determination made at the October 23 meeting.

E. Other:

- Mr. Emerson:
 - Acknowledged and thanked former Planner Gerry Mylroie for his years of service to the Town.
 - Spoke of perceived or potential conflict of a Planner also assuming the role of Economic Development.

Mr. Melanson: Gerry Mylroie was an officer of the Kittery Maine Improvement Foundation, a C corporation. This should be followed up on.

Ms. Grinnell: Is it possible for the Board to meet with the Town Manager to discuss the position of Planner and the Board's expectations? Mr. DiMatteo will look into this.

Mr. Melanson: The KPA received significant professional help from the Town in filling the position of Harbormaster, and the Board should have some involvement in the process of filling the position of Town Planner.

Mr. Emerson: Is more interested in understanding the roles and responsibilities of the Planner and the Board.

- Ms. Grinnell: She and Ms. Davis met with the Town Manager regarding the Shore and Harbor Plan and it was suggested the plan be 'shelved' for the time being.
Mr. Emerson: Retain on the Board's action list, but with a low priority.
- Ms. Kalmar: Asked that the Council re-form the Foreside Committee, as it is part of the Code.
Mr. Emerson: The responsibilities of this Committee should be addressed.
Ms. Davis: Foreside residents should contact the Town Manager if they want to serve on this committee.
- Ms. Grinnell: A Foreside Forum is scheduled for September 29 at 7:00 p.m. at the Kittery Community Center.
- Mr. Melanson: Provided the KPA Annual Report to Board members. Pending reference checks, the new Harbormaster is Derek Jacobs, with a start date of September 29.

ITEM 4 – Town Planner Items:

Mr. DiMatteo: Wished Gerry Mylroie best of luck in future endeavors.

- A. Memorial Circle Plan Status:
Meeting was held on September 8; working on budget and will bring to the Board for comment.
- B. SML Bridge Plan Review:
 - MDOT open house on September 18 from 3-6 at the Kittery Community Center
 - Joint Council and Planning Board informational meeting on September 25.
- C. Quality Improvement Plan for Kittery Foreside;
 - Mr. Melanson: This is a TIF District initiated by Mr. Mylroie, in addition to discussions regarding redevelopment of the Water District site.
- D. Quality Improvement Plan for Route 1 By Pass District;
 - \$20,000 grant from KACTS (Kittery Area Comprehensive Transportation System) was previously approved, but is now under discussion due to scope changes.

Mr. Emerson: Understands there are also funds available for improvements at the intersection of Walker and the Navy gate. Are these Planning or Public Works projects? Need to discuss.

Ms. Grinnell: Public Works should be notifying the Board regarding town projects. This needs to be on the list for discussion with the Town Manager.

Mr. DiMatteo: Will speak with Norm Albertson about providing a list of DPW projects and, if warranted, a presentation.

E. Other

Ms. Tuveson moved to adjourn

Mr. Melanson seconded

Motion carried unanimously

The Kittery Planning Board meeting of September 11, 2014 adjourned at 7:52 p.m.
Submitted by Jan Fisk, Recorder, September 16, 2014